STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of PEREZ/GARCIA, Minors.	UNPUBLISHED November 14, 2013 No. 316596 Branch Circuit Court Family Division LC No. 12-004715-NA
In the Matter of J. PEREZ, Minor.	No. 316598 Branch Circuit Court Family Division LC No. 12-004715-NA

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

In docket no. 316596, respondent-mother appeals by right the trial court's orders terminating her parental rights to the minor children, LG, JG, and JP under MCL 712A.19b(3)(b)(*i*) (sibling suffered abuse and reasonable likelihood child will be abused), (j) (reasonable likelihood of harm if child is returned to parent's home), (k)(*iii*) (parent abused sibling and abuse included battery, torture, or other severe physical abuse), and (k)(*v*)[1] (parent abused sibling and abuse included a life threatening injury). In docket no. 316598, respondent-father appeals by right the trial court's order terminating his parental rights to the minor child JP under MCL 712A.19b(3)(b)(*i*) and (j). We affirm.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been

[1] Petitioner moved to terminate respondent-mother's parental rights pursuant to MCL 712A.19b(3)(k)(*iii*) and (k)(*v*). When the trial court rendered its oral ruling, it did not state explicitly that it was terminating respondent-mother's parental rights pursuant to (k)(*iii*) and (k)(*v*) but quoted the language contained in each of those subsections. Further, despite respondent-mother's argument to the contrary, the record supports that the trial court did not terminate her parental rights under MCL 712A.19b(3)(n).

met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "We review the trial court's determination for clear error." *Id.* "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

With respect to respondent-mother and respondent-father, we find that the trial court did not clearly err in finding that petitioner established by clear and convincing evidence a statutory ground for termination under MCL 712A.19b(3)(j) (reasonable likelihood of harm if child is returned to parent's home). Termination of parental rights under (j) is "permissible even in the absence of definitive evidence regarding the identity of the perpetrator where the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's [physical] injuries." *In re Ellis*, 294 Mich App 30, 35-36; 817 NW2d 111 (2011). Here, five-month-old DP was brought into the hospital on February 4, 2012, with a skull fracture and bleeding on the surface of her brain. DP also had arm, leg, and rib fractures, which were in various stages of healing. Subsequently, DP was pronounced brain dead and died. An autopsy determined that DP's death was the result of "blunt force injuries of the head" and was ruled a homicide. Respondents, who lived together and were both involved in DP's care, could not provide plausible explanations for her injuries. Although expert testimony established that DP would have exhibited signs of discomfort as a result of her broken bones, respondents denied that they had knowledge of her injuries. The record establishes that DP was in respondent-mother's care at the time she sustained her fatal brain injury, thus supporting the conclusion that she caused the injury. The record further establishes that respondent-father sent respondent-mother text messages several days before the injury, instructing her to be "patient" and not to yell or hit the children, patently indicating that he knew that respondent-mother was physically abusive or failed to prevent DP's injuries. Accordingly, the trial court's finding that there was a reasonable likelihood of harm if the children were returned to respondents' home does not leave us with "a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459. Because we have concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision. *Id.* at 461.

In docket no. 316596, respondent-mother also argues that termination of her parental rights was not in the children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). We review a trial court's finding that termination is in the child's best interests for clear error. *In re HRC*, 286 Mich App at 459. This Court has held a trial court's finding that termination was in the children's best interest was not clearly erroneous where "the children's safety and well-being could not reasonably be assured in light of the past severe abuse of the children while in respondents' care which remained unresolved," and where the children were "thriving and progressing" in a stable home where they had been placed. *In re VanDalen*, 293 Mich at 141-142.

Here, DP suffered multiple unexplained injuries while in respondent-mother's primary care. Further, respondent-mother was caring for DP when she sustained her fatal brain injury, which was ruled a homicide. Respondent-mother never provided a plausible explanation as to how DP sustained any of her injuries; therefore, we find that the evidence established that the "safety and well-being" of the children "could not be reasonably assured in light of the past

severe abuse" of DP while in respondent-mother's care. *In re VanDalen*, 293 Mich at 142. The fact that the termination would provide the children with stability and permanency also underscores the determination that termination was in their best interests. *Id*. LG was placed with his biological father. JG and JP were flourishing in their foster home, and their foster parents expressed a strong interest in adopting them. Additionally, respondent-mother was not going to be released from prison until 2015. Further, although termination resulted in LG's being separated from his siblings, we agree that termination of respondent-mother's parental rights was required to ensure the safety of each of the children. See *In re Olive/Metts*, 297 Mich App at 42 ("the trial court has a duty to decide the best interests of each child individually"). Based on a review of the record, we conclude the trial court did not clearly err by ruling that terminating respondent-mother's parental rights was in the children's best interest. MCL 712A.19b(5); *In re HRC*, 286 Mich App at 459.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Jane M. Beckering